

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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KENNETH BAILEY,  
CHARLES BROOKS,  
SYLVIA TORRES, as Administratrix of the Estate of  
Jorge Burgos, Jr.,  
LOUIS MASSEI,  
ROBERT TROCCHIO,  
ROBERT WARREN,

08-Civ-8563 (JSR)  
08-Civ-8665 (JSR)  
  
08-Civ-8924 (JSR)  
08-Civ-8923 (JSR)  
08-Civ-8925 (JSR)  
08-Civ-9609 (JSR)

PLAINTIFFS

vs

GEORGE PATAKI, et al.,

DEFENDANTS

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SUPPLEMENTAL DECLARATION OF AMEER  
BENNO IN FURTHER SUPPORT OF MOTION FOR  
ATTORNEYS' FEES AND OTHER DISCRETIONARY  
COSTS PURSUANT TO 42 U.S.C. § 1988 AND  
FED.R.CIV.P. 54(d)(2)

AMEER BENNO, declares, pursuant to 28 U.S.C. § 1746 and under penalty of  
perjury, as follows:

1. I, along with other members of our litigation team, represent the plaintiffs  
in these six consolidated actions. As such, I am familiar with the facts and circumstances  
concerning the prosecution of this action. I respectfully submit this supplemental  
declaration in support of plaintiffs' application, pursuant to 42 U.S.C. § 1988 and  
Fed.R.Civ.P. 54(d), for an order awarding plaintiffs attorneys' fees and costs as the  
prevailing party in this litigation.

2. In further support of the within application, I submit the following exhibits, which are annexed hereto:

Exhibit A: A copy of the Third Amended Complaint in Wheeler v. Pataki, et al., 07-CV-0892 (TJM) (TWD);

Exhibit B: A copy of the Complaint in Smith, et al. v. Pataki, et al., Index No. 116457/2009 (Sup. Ct. N.Y. Co.);

Exhibit C: A copy of the Claim in Frank v. State, Claim No. 114404 (Ct. Cl.);

Exhibit D: A copy of the Claim in Torres v. State, Claim No. 117590 (Ct. Cl.);

Exhibit E: Redacted copies of a sampling of retainer agreements I have entered into with clients in civil rights cases, criminal defense matters, and appellate litigation from 2009 through 2013;

Exhibit F: Copies of receipts for most of the expenses submitted for reimbursement in connection with plaintiffs' motion for attorney fees;

Exhibit G: Supplemental Time Sheet showing the work expended by me on this matter since the filing of the fee application on September 30, 2013.

Additional pertinent materials are annexed as exhibits to the Declaration of my co-counsel, Jeffrey Rothman, also submitted in support of the instant application.

3. Defendant Carpinello, in attacking the rates sought by plaintiffs' counsel herein, complains that we do not provide the Court with retainer agreements showing that we have been retained at the rates sought herein.

4. From 2009 through 2012, my rate was \$450 per hour. On or about May 1, 2012, I raised my rate from \$450 to \$475 per hour. It remained at that rate until one year later, when I raised it again to \$550 per hour.

5. Annexed hereto as **Exhibit “E”** is a sampling of several redacted<sup>1</sup> retainer agreements that I have entered into with clients between 2009 and 2013, which confirms the above.<sup>2</sup>

6. I (and my co-counsel) have billed for all of our time spent over the course of this protracted litigation at our current respective rates. See LeBlanc-Steinberg v. Fletcher, 143 F.3d 748, 764 (2d Cir. 1998) (“Current rates, rather than historical rates, should be applied in order to compensate for the delay in payment.”); Rozell v. Ross-Holst, 576 F. Supp.2d 527, 545 (S.D.N.Y. 2008) (Francis, M.J.) (“current rather than historic rates should be utilized to account for the delay between the date services were rendered and when fees can be recovered”).

7. Annexed hereto as **Exhibit “G”** is a supplemental time sheet, showing the work expended on this matter since the filing of the fee application on September 30, 2013. I have spent 46.2 further hours in connection with preparing the reply papers in this matter. At \$550 per hour that comes to an additional \$25,410 that I respectfully request be awarded in connection with the instant fee application.

8. Plaintiffs' counsel also, in a further exercise of billing judgment, meant to remove from our expense sheets the request for reimbursement of travel and lodging expenses for the family of plaintiffs Robert Warren, Charles Brooks, and Robert Trocchio to be present at the trial. Those expenses were inadvertently included on the expense spreadsheet submitted with plaintiffs' September 30, 2013 application. We hereby

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<sup>1</sup> In order to preserve client confidentiality, all information not germane to the issue of my hourly rate has been redacted.

<sup>2</sup> Additionally, these retainers reveal that attorneys Richard Sullivan and Reza Rezvani, with whom your affirmant co-counseled some of these cases, were also retained at an hourly rate of \$450 per hour in 2009 and 2010.

withdraw the request for reimbursement of those expenses (totaling \$6,708.46), which include:

- a. Item # 174 (for \$60.50)
- b. Item # 175 (for \$21.50)
- c. Item # 176 (for \$28.00)
- d. Item # 184 (for \$289.21)
- e. Item # 185 (for \$2,029.60)
- f. Item # 187 (for \$1,639.62)
- g. Item # 191 (for \$91.85)
- h. Item # 192 (for \$346.61)
- i. Item # 193 (for \$220.44)
- j. Item # 194 (for \$151.53)
- k. Item # 195 (for \$1,804.60)
- l. Item # 196 (for \$25.00)

9. Plaintiffs also hereby withdraw the request for reimbursement for the following expenses (totaling \$35,647.45), which were inadvertently listed on the spreadsheet as the result of clerical error:

- a. Item #26 (for \$60.00)
- b. Item # 87 (for \$105.00)
- c. Item # 89 (for \$398.65)
- d. Item # 108 (for \$131.79)
- e. Items # 239 through # 261 (totaling \$34,952.01)

Dated: New York, NY  
November 4, 2013

Respectfully submitted,

/S/  
Ameer Benno

# CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of November, 2013, I filed the foregoing SUPPLEMENTAL DECLARATION OF AMEER BENNO WITH EXHIBITS electronically through the district court's CM/ECF system, which caused the following parties and counsel to be served by electronic means, as reflected on the Notice of Electronic Filing generated by the CM/ECF system:

Office of New York State Attorney General  
Assistant Attorney General Barbara Hathaway  
Assistant Attorney General Rebecca Durden  
Assistant Attorney General Michael Albanese  
Assistant Attorney General Jason Buskin  
Attorneys for all Defendants other than Defendant Pataki

Chadbourn & Parke LLP  
Abbe David Lowell  
Christopher D. Man  
Seth Michael Kruglak  
Benjamin David Bleiberg  
Attorneys for Defendant Pataki

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Ameer Benno